

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

- against -

16-CR-108 (ALC)

ORDER

CARLOS VALLEJO,

Defendant.

-----X

ANDREW L. CARTER, JR., United States District Judge:

On September 22, 2016, Vallejo pleaded guilty to conspiring to commit Hobbs Act Robbery and possessing a firearm during a crime of violence.¹ Conspiracy to commit Hobbs Act Robbery was designated as the crime of violence, serving as the predicate for the firearm count under 18 U.S.C. 924(c). In 2019, the Second Circuit in *Barrett* held that conspiracy to commit Hobbs Act Robbery cannot serve as a predicate offense under 924(c). *United States v. Barrett*, 937 F.3d 126 (2d Cir. 2019).

On December 6, 2020, Vallejo sought compassionate release and a sentence reduction from the Bureau of Prisons. On August 16, 2021, he filed a motion with the Court seeking compassionate release and a sentence reduction based on his rehabilitative efforts in prison as well as his medical conditions, especially in light of the COVID-19 pandemic. The government submitted its opposition on January 7, 2022. The defendant replied on January 10.

¹ The transcript from the guilty plea is attached as Exhibit A.

The parties shall file submissions indicating how, if at all, *Barrett* affects the sentence in this case, including the motion for compassionate release/sentence reduction. The defendant should file a letter by January 21; the government should respond by letter no later than January 25. Neither submission shall exceed 5 pages.

SO ORDERED.

Dated: January 19, 2022
New York, New York

/s/ Andrew L. Carter, Jr.
ANDREW L. CARTER, JR.
United States District Judge

Exhibit A

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 108 (WHP)

5 CARLOS VALLEJO,

6 Plea

7 Defendant.

8 -----x
9 New York, N.Y.
10 September 22, 2016
2:00 p.m.

11 Before:

12 HON. WILLIAM H. PAULEY III,

13 District Judge
14

15 APPEARANCES

16 PREET BHARARA
17 United States Attorney for the
Southern District of New York
18 HAGAN C. SCOTTEN
Assistant United States Attorney

19 MEGAN WOLFE BENETT
20 Attorney for Defendant
21
22
23
24
25

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(Case called)

MR. SCOTTEN: Hagan Scotten, for the government. Good afternoon, your Honor.

THE COURT: Good afternoon, Mr. Scotten.

MS. BENETT: Good afternoon, Judge Pauley. Megan Benett, on behalf of Mr. Carlos Vallejo, who is seated to my right.

THE COURT: Good afternoon to you, Ms. Benett. I note the presence of Mr. Vallejo at counsel table.

Ms. Benett, I'm informed that the defendant has an application. What is that application?

MS. BENETT: Yes, your Honor. At this time, Mr. Vallejo would like to withdraw his previously entered plea of not guilty and enter a plea of guilty pursuant to a plea agreement with the government.

THE COURT: All right. The record should reflect that a plea agreement is being handed up to me for my inspection.

Ms. Benett, prior to the commencement of this proceeding this afternoon, did you review with your client an advice-of-rights form?

MS. BENETT: I did, your Honor. We went over it together.

THE COURT: Did he sign it in your presence?

MS. BENETT: He did.

THE COURT: Did you sign it as his counsel?

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1 MS. BENETT: I did.

2 THE COURT: The record should reflect that an
3 advice-of-rights form has been marked as Court Exhibit 1 and
4 handed to me for inspection. At this time, I'm going to direct
5 my deputy to administer the oath to Mr. Vallejo.

6 (Defendant sworn)

7 THE COURT: Mr. Vallejo, do you understand, sir, that
8 you're now under oath and if you answer any of my questions
9 falsely, your false or untrue answers may later be used against
10 you in another prosecution for perjury or making a false
11 statement?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: What is your full name?

14 THE DEFENDANT: Carlos Jose Vallejo.

15 THE COURT: How old are you?

16 THE DEFENDANT: 29.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: I went to college.

19 THE COURT: How far in college?

20 THE DEFENDANT: About two years.

21 THE COURT: All right. Are you able to read, write,
22 speak, and understand English?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Are you now or have you recently been
25 under the care of a doctor or psychiatrist?

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1 THE DEFENDANT: No, sir.

2 THE COURT: Have you ever been treated or hospitalized
3 for any mental illness or any type of addiction, including drug
4 or alcohol addiction?

5 THE DEFENDANT: No, sir.

6 THE COURT: In the past 24 hours, have you taken any
7 drug, medicine, or pill, or have you consumed any alcohol?

8 THE DEFENDANT: No, sir.

9 THE COURT: Is your mind clear today?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Are you feeling all right today,
12 Mr. Vallejo?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you represented by an attorney here
15 today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Who is your attorney?

18 THE DEFENDANT: Megan Wolfe.

19 THE COURT: And Ms. Benett, do you have any doubt as
20 to the competence of your client to plead at this time?

21 MS. BENETT: I have no doubt, your Honor.

22 THE COURT: All right. Mr. Vallejo, your attorney,
23 Ms. Benett, has informed me that you wish to enter a plea of
24 guilty. Do you wish to enter a plea of guilty?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Have you had a full opportunity to discuss
2 your case with your attorney and to discuss the consequences of
3 entering a plea of guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you satisfied with your attorney,
6 Ms. Benett, and her representation of you in this matter?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: On the basis of Mr. Vallejo's responses to
9 my questions and my observations of his demeanor here in my
10 courtroom this afternoon, I find that he's fully competent to
11 enter an informed plea at this time.

12 Before I accept any plea from you, Mr. Vallejo, I'm
13 going to ask you certain questions. My questions are intended
14 to satisfy me that you wish to plead guilty because you are
15 guilty and that you fully understand the consequences of your
16 plea. I'm going to describe to you certain rights that you
17 have under the Constitution and laws of the United States,
18 which rights you'll be giving up if you enter a plea of guilty.
19 Please listen carefully. If you do not understand something I
20 am saying or describing, then please stop me and either I or
21 your attorney, Ms. Benett, will explain it to you more fully.
22 Do you understand this, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Vallejo, under the Constitution and
25 laws of the United States, you have a right to a speedy and

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1 public trial by a jury on the charges against you which are
2 contained in the indictment. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: If there were a trial, you would be
5 presumed innocent and the government would be required to prove
6 you guilty by competent evidence beyond a reasonable doubt at a
7 trial. You would not have to prove that you were innocent at a
8 trial. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: If there were a trial, a jury composed of
11 12 people selected from this district would have to agree
12 unanimously that you were guilty. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If there were a trial, you would have the
15 right to be represented by an attorney, and if you could not
16 afford one, an attorney would be provided to you free of cost.
17 Do you understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: If there were a trial, Mr. Vallejo, you
20 would have the right to see and hear all the witnesses against
21 you, and your attorney could cross-examine them. You would
22 have the right to have your attorney object to the government's
23 evidence and offer evidence on your behalf if you so desired,
24 and you would have the right to have subpoenas issued or other
25 compulsory process used to compel witnesses to testify in your

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1 defense. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: If there were a trial, you would have the
4 right to testify if you wanted to, but no one could force you
5 to testify if you did not want to. Further, no inference or
6 suggestion of guilt could be drawn if you chose not to testify
7 at a trial. Do you understand that, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you understand that by entering a plea
10 of guilty today, you're giving up each and every one of the
11 rights I've described, that you're waiving those rights, and
12 that you'll have no trial?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand that you can change your
15 mind right now and refuse to enter a plea of guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You do not have to enter this plea if you
18 do not want to for any reason whatsoever. Do you understand
19 this fully, Mr. Vallejo?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, Mr. Vallejo, have you received a copy
22 of the indictment in this case?

23 THE DEFENDANT: Yeah.

24 THE COURT: Have you read it?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: And did you discuss it with your attorney,
2 Ms. Benett?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you waive my reading the indictment
5 word for word here in open court?

6 (Counsel conferred with defendant)

7 THE DEFENDANT: Yes, I waive my right.

8 THE COURT: Do you understand that Count One of the
9 indictment charges you with conspiracy to commit Hobbs Act
10 robbery, in violation of Title 18 of the United States Code,
11 Section 1951?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And do you understand that Count Three of
14 the indictment charges you with using, possessing, carrying,
15 and brandishing a firearm during and in relation to the robbery
16 conspiracy charged in Count One, in violation of Title 18 of
17 the United States Code, Sections 924(c)(1)(A)(ii) and 2? Do
18 you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And do you understand as part of your
21 agreement with the government that the government is agreeing
22 to accept a guilty plea from you of using, possessing, and
23 carrying a firearm during and in relation to the robbery
24 conspiracy charged in Count One, in violation of Title 18 of
25 the United States Code, Section 924(c)(1)(A)(i) and Section 2?

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1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And if you did not plead guilty, the
4 government would be required to prove the elements of these
5 crimes by competent evidence at trial and beyond a reasonable
6 doubt in order to convict you. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Scotten, for the benefit of the Court
9 and the defendant, would you describe the essential elements of
10 the Hobbs Act robbery conspiracy and the substantive firearms
11 charge?

12 MR. SCOTTEN: Yes, your Honor. The Hobbs Act robbery
13 conspiracy charged in Count One has three elements: First, two
14 or more persons agreed to commit robbery, as that term is
15 defined in 18 U.S.C., Section 1951; second, the agreement or
16 conspiracy, if carried out, would obstruct, delay, or affect
17 commerce, as that term is defined in 18 U.S.C., Section
18 1951(b)(3); and third, that the defendant knowingly and
19 willingly joined that conspiracy.

20 Hobbs Act robbery under Section 1951, the underlying
21 charge of the conspiracy, has three elements: First, that the
22 defendant knowingly obtained or took the personal property of
23 another or from the presence of another; second, that the
24 defendant took this property against the victim's will by
25 actual or threatened force, violence, or fear of injury,

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1 whether immediately or in the future; and third, that as a
2 result of defendant's actions interstate commerce, or items
3 moving in interstate commerce, was delayed, obstructed, or
4 affected in any way or degree.

5 The firearms charge in Count Three has three elements:
6 First, that the defendant used or carried or possessed a
7 firearm or aided and abetted others in doing the same; second,
8 that the defendant did so knowingly; third, that the firearm
9 was used or carried during and in relation to the commission of
10 a crime of violence or drug-trafficking crime for which the
11 defendant might be prosecuted in a court of the United States,
12 here, the offense charged in Count One, or possessed that
13 firearm in furtherance of that crime.

14 The government would also prove venue in the Southern
15 District of New York by a preponderance of the evidence.

16 THE COURT: Thank you, Mr. Scotten.

17 Mr. Vallejo, have you listened closely to Assistant
18 United States Attorney Hagan Scotten as he's described the
19 essential elements of each of the offenses charged in Counts
20 One and Three of the indictment against you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you understand the government would
23 have to prove all of those elements by competent evidence,
24 beyond a reasonable doubt, in order to convict you?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Do you understand, sir, that the maximum
2 possible penalty for the Hobbs Act robbery conspiracy charged
3 in Count One to which you're pleading is 20 years of
4 imprisonment, followed by a maximum term of three years of
5 supervised release, together with a maximum fine of \$250,000,
6 and a \$100 mandatory special assessment? Do you understand
7 that, sir?

8 THE DEFENDANT: Yes.

9 THE COURT: And supervised release means that you will
10 be subject to monitoring when you are released from prison, the
11 monitoring to be under terms and conditions which could lead to
12 reimprisonment without a jury trial for all or part of the term
13 of supervised release if you violate the terms and conditions
14 of supervised release. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And do you understand that the maximum
17 possible penalty for the crime charged in Count Three of the
18 indictment is life in prison and a maximum term of five years
19 of supervised release and a maximum fine of \$250,000, and a
20 \$100 mandatory special assessment? Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And do you also understand that separate
23 and apart from that maximum possible sentence, Count Three also
24 carries a mandatory minimum term of five years of imprisonment,
25 which must run consecutively to any sentence of imprisonment

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1 imposed with respect to Count One to which you're pleading? Do
2 you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you also understand that that
5 consecutive sentence of a mandatory minimum of five years must
6 also run consecutively to the sentence that you're currently
7 serving for the crime to which you pled guilty at an earlier
8 time before Judge Carter? Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, you're pleading guilty to two
11 different counts in the indictment. Do you understand that
12 you'll be separately sentenced on each of those counts?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And do you understand that in this case,
15 the sentences will run consecutively? Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Therefore, do you understand that your
18 sentence could be a maximum total of life in prison?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you a citizen of the United States?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that if I accept your
23 guilty plea and adjudge you guilty, that adjudication may
24 deprive you of valuable civil rights, such as the right to
25 vote, the right to hold public office, to serve on a jury, or

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1 to possess any kind of firearm?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you talked with your attorney,
4 Ms. Benett, about the sentencing guidelines?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you understand this Court will not
7 be able to determine your sentence until after a probation
8 office report has been completed and the probation office and
9 you and the government have had a chance to challenge any of
10 the facts reported by the probation office? Do you understand
11 that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And when I say a probation report, I mean,
14 of course, a presentence report. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you understand as well that even after
17 it's determined what guideline range applies in your case, that
18 is just a starting point for the Court and that I am required
19 under the law to consider all of the factors in Section 3553(a)
20 in fashioning a sentence for you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand that if you're sentenced
23 to prison, parole has been abolished and you will not be
24 released any earlier on parole?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: Do you understand that if your attorney or
2 anyone else has attempted to estimate or predict what your
3 sentence would be, their estimate or prediction could be wrong?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: No one, Mr. Vallejo, not even your
6 attorney or the government, can nor should give you any
7 assurance of what your sentence will be. Your sentence cannot
8 be determined until after the presentence report is completed
9 and I've ruled on any challenges to the report and determined
10 what sentence I believe is appropriate giving due regard to all
11 of the factors in Section 3553(a). Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you also fully understand that even if
14 your sentence is different from what your attorney or anyone
15 else told you it might be, or if it's different from what you
16 expect, that you will still be bound to your guilty plea and
17 you will not be allowed to withdraw your plea of guilty?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Mr. Vallejo, I've been given this plea
20 agreement. Did you sign it?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you discuss it with your attorney
23 before you signed it?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did you read it before you signed it?

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1 THE DEFENDANT: Yes, sir.

2 THE COURT: Did you fully understand this agreement at
3 the time that you signed it?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And does this letter agreement constitute
6 your complete and total understanding of the entire agreement
7 among the government, your attorney, and you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is everything about your plea and sentence
10 contained in this agreement?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has anything been left out?

13 THE DEFENDANT: No, sir.

14 THE COURT: Has anyone offered you any inducements or
15 threatened you or forced you to plead guilty or to enter into
16 the plea agreement?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you understand, sir, that under the
19 terms of this plea agreement, you're giving up or waiving your
20 right to appeal or otherwise challenge your sentence if I
21 sentence you within or below the stipulated guidelines range of
22 117 to 131 months of imprisonment? Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you understand that that figure of
25 117 to 131 months is comprised of a guideline range with

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1 respect to Count One of 57 to 71 months of imprisonment and
2 then a mandatory consecutive term of 60 months on Count Three?
3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you also understand that I'm completely
6 free to disregard any position or recommendation by your
7 attorney or by the government as to what your sentence should
8 be and that I have the ability to impose whatever sentence I
9 believe is appropriate under the circumstances, and you'll have
10 no right to withdraw your plea?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And do you understand that in addition to
13 all the penalties I've described this Court must order
14 restitution in this case to the victims of your crime?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Ms. Benett, do you know of any valid
17 defense that would prevail at trial, or do you know of any
18 reason why your client should not be permitted to plead guilty?

19 MS. BENETT: No, your Honor.

20 THE COURT: Is there an adequate factual basis to
21 support this plea of guilty, Ms. Benett?

22 MS. BENETT: There is, your Honor.

23 THE COURT: Mr. Scotten, is there an adequate factual
24 basis to support this plea of guilty?

25 MR. SCOTTEN: Yes, your Honor.

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1 THE COURT: Mr. Vallejo, please tell me what you did
2 in connection with the Hobbs Act robbery conspiracy and the
3 substantive firearms charges in Counts One and Three.

4 THE DEFENDANT: On February 21, 2011, I agreed with
5 other people to commit a robbery near West 173rd Street in
6 Manhattan.

7 (Counsel conferred with defendant)

8 THE DEFENDANT: And we were going to steal money. And
9 at the time that we made the agreement, I knew a gun would be
10 used, carried when committing that robbery.

11 THE COURT: And where were you when you made this
12 agreement with other people to rob a home on 173rd Street?

13 THE DEFENDANT: In Manhattan.

14 THE COURT: And did you understand, sir, that this was
15 going to be a home invasion robbery?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And was it your intent to find money
18 there?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And why did you think there would be money
21 there?

22 THE DEFENDANT: Because --could I talk to my attorney
23 first?

24 THE COURT: Yes.

25 (Counsel conferred with defendant)

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1 THE DEFENDANT: Because I knew there was a gambling
2 operation inside.

3 THE COURT: And did you understand that what you were
4 doing was wrong and illegal?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you knew before you went there that
7 someone was going to be carrying a firearm?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And did you see a firearm displayed?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Mr. Scotten, would the
12 government please summarize its evidence against the defendant.

13 MR. SCOTTEN: Yes, your Honor. The evidence against
14 the defendant would include witness testimony identifying the
15 defendant and his coconspirators during the robbery, also
16 identifying the object of the robbery, the proceeds of the
17 gambling business, and describing the brandishing of the
18 firearm during the robbery; video depicting the defendant and
19 his coconspirators committing the robbery and showing the
20 firearm briefly during that video; and cell phone records
21 showing that defendant's cell phone was in the location both of
22 the robbery and of the car jacking that preceded it and was in
23 communication with some of his coconspirators.

24 THE COURT: Thank you, Mr. Scotten.

25 Mr. Vallejo, would you stand now, sir. Mr. Carlos

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1 Vallejo, how do you now plead to the charge in Count One of
2 conspiring to commit Hobbs Act robbery, in violation of Title
3 18 of the United States Code, Section 1951; guilty or not
4 guilty?

5 THE DEFENDANT: I plead guilty.

6 THE COURT: And how do you plead to the charge in
7 Count Three, the firearms charge, namely, that you were
8 involved with using, possessing, and carrying a firearm during
9 and in relation to the robbery conspiracy under Section
10 924(c)(1)(A)(i); guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: And are you pleading guilty to these two
13 charges because you are guilty?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you pleading guilty voluntarily and of
16 your own free will?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Ms. Bennett, do you wish me to make any
19 further inquiries of your client?

20 MS. BENETT: No, your Honor.

21 THE COURT: Mr. Scotten, does the government wish me
22 to make any further inquiries of the defendant?

23 MR. SCOTTEN: No, your Honor. Thank you.

24 THE COURT: Mr. Vallejo, because you acknowledge that
25 you're guilty as charged in Counts One and Three of the

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1 indictment and because I find you know your rights and are
2 waiving them knowingly and voluntarily and because I find your
3 plea is entered knowingly and voluntarily and is supported by
4 an independent basis in fact containing each of the essential
5 elements of the offenses, I accept your guilty plea and adjudge
6 you guilty of Hobbs Act robbery conspiracy as charged in Count
7 One and the firearms charge as set forth in Count Three.

8 You may be seated.

9 Now, the U.S. Probation Office will next prepare a
10 presentence report to assist me in sentencing you. You will be
11 interviewed by the probation office. It's important that the
12 information you give the probation officer be truthful and
13 accurate. The report is important in my decision as to what
14 your sentence will be. You and your attorney have a right and
15 will have an opportunity to examine the report, challenge or
16 comment upon it, and to speak on your behalf before sentencing.

17 I'm going to set this matter down for sentencing on
18 January 27 at 3 p.m. I'll note for counsel that Mr. Maccow is
19 also scheduled to be sentenced on that day and time. I'm going
20 to direct the government to provide its prosecution case
21 summary to probation forthwith. And Ms. Bennett, you should
22 promptly arrange for an interview with the probation
23 department.

24 MS. BENETT: Your Honor, I know some judges direct on
25 the record that the probation officer not conduct the interview

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1 in the absence of counsel.

2 THE COURT: I can't hear you.

3 MS. BENETT: Some judges in this courthouse direct on
4 the record that probation not conduct an interview without
5 counsel present. I don't know if this Court is inclined to do
6 so.

7 THE COURT: I'm not going to direct it, but you will
8 arrange for the interview, and if there's any problem, you'll
9 let me know. Certainly your client has the right to have his
10 counsel present during such an interview, and I would never
11 interfere with that.

12 MS. BENETT: There's just been a couple of instances
13 of miscommunication with probation, so I just wanted to be
14 clear on the record that I wanted to be present with
15 Mr. Vallejo. And I just wanted to make sure I understood
16 correctly that on the 27th of January you will be sentencing
17 Mr. Vallejo and Mr. Maccow at the same time or back to back?

18 THE COURT: I think I'll likely sentence them at the
19 same time.

20 MS. BENETT: OK.

21 THE COURT: All right?

22 Mr. Vallejo, probation's going to prepare now a
23 presentence report. You're going to be interviewed by the
24 probation office. It's important that the information you give
25 the probation officer be truthful and accurate because it's

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1 important in my decision as to what your sentence will be. And
2 I remind you once again that you and your attorney will have an
3 opportunity to examine the report, challenge or comment upon
4 it, and to speak on your behalf before sentencing.

5 Anything further?

6 MR. SCOTTEN: Nothing from the government. Thank you,
7 your Honor.

8 THE COURT: Anything further?

9 MS. BENETT: Nothing from the defense, your Honor.

10 THE COURT: Very well. This matter is concluded.
11 Have a good afternoon.

12 (Adjourned)